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Before the  
Federal Communications Commission  
Washington, DC 20554

Federal Communications Commission  
Office of Secretary

In the Matter of

BellSouth Telecommunications, Inc.  
BST Tariff No. 1

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98-161

BST Transmittal No. 476

To: The Competitive Pricing Division

**PETITION TO REJECT  
OR SUSPEND AND INVESTIGATE**

e•spire Communications, Inc., by its attorneys, hereby petitions the Commission to reject or, alternatively, to suspend Transmittal No. 476 of BellSouth Telecommunications, Inc. ("BST") pending investigation of the same. Through Transmittal No. 476, BST seeks to tariff Asymmetrical Digital Subscriber Line ("ADSL") service as an *interstate* exchange access offering. However, ADSL is not an interstate access service and BellSouth's proposed tariff changes patently violate the Communications Act of 1934, as amended (the "Act"), Commission decisions, and sound public policy. Therefore, the Commission should reject BST's Transmittal.<sup>1</sup>

**I. The Commission Should Not Countenance BellSouth's Back-Door Attempt to Classify ADSL as an Interstate Access Service**

BellSouth's motivation for the tariff revisions proposed in Transmittal No. 476 is obvious. Like GTE before it, BellSouth filed these tariff revisions in an attempt to make an end-

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<sup>1</sup> e•spire fully supports the Petition to Reject or Suspend being filed by the Association for Local Telecommunications Services, and offers this Petition as a complement thereto.

run around state regulation of ADSL services and to upend twenty state decisions requiring incumbent local exchange carriers, such as BellSouth, to pay reciprocal compensation to competitive local exchange carriers for calls terminated to information service providers ("ISPs"). e.spire respectfully submits that Commission ought not allow BellSouth to remove ADSL services from state regulation through a tariff filing. The Commission already has before it the issues raised by BellSouth's filing and it would be imprudent to permit these tariff revisions to take effect while those issues await resolution.

As e.spire set forth in its Petition to Reject or Suspend and Investigate GTE's similar ADSL tariff filing,<sup>2</sup> ADSL services used to provide Internet access are not interstate access services. Rather, they are local services subject to state regulation and the reciprocal compensation, unbundling and resale provisions of Sections 251 and 252 of the Act. Twenty state decisions and multiple Commission decisions support this position. State after state has determined that ISP traffic is local traffic subject to the reciprocal compensation requirements of Section 251(b)(5). Moreover, in its *Access Charge Reform* decision, the Commission confirmed that ISPs are end users, *not carriers*, and should *not* be required to pay interstate access charges.<sup>3</sup> BellSouth's proposed tariff revisions could upend the state decisions by allowing BellSouth to classify ADSL as an interstate access service via the FCC's tariff filing processes. The proposed revisions also would run counter to Commission precedent in that they would, for the first time, impose access charges on ISPs.

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<sup>2</sup> GTE Telephone Operators, GTOC Tariff No. 1, GTOC Transmittal No. 1148, CC Docket No. 98-79, e.spire Petition to Reject or Suspend and Investigate (filed May 22, 1998).

<sup>3</sup> *Access Charge Reform Order*, CC Docket No. 96-262, FCC 97-158, ¶¶ 344-46 (May 16, 1997) (subsequent history omitted). *See also Federal-State Joint Board on Universal Service*, Report to Congress, CC Docket No. 96-45, ¶ 106 (April 10, 1998).

### Conclusion

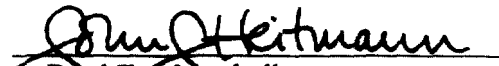
For the foregoing reasons, the Commission should reject BST's Transmittal No. 476. At a minimum, it should suspend the effective date of the tariff for the maximum period while it investigates the lawfulness of the proposed revisions.

Respectfully submitted,

e•spire COMMUNICATIONS, INC.

Riley M. Murphy  
Executive Vice President  
Legal and Regulatory Affairs  
James C. Falvey  
Vice President Regulatory Affairs  
e•spire Communications, Inc.  
133 National Business Parkway, Suite 200  
Annapolis Junction, Maryland 20701  
(301) 361-4200

By:

  
Brad E. Mutschelknaus  
Edward A. Yorkgitis, Jr.  
John J. Heitmann  
KELLEY DRYE & WARREN LLP  
1200 19th Street, NW, Fifth Floor  
Washington, DC 20036  
(202) 955-9600

Its Attorneys

August 25, 1998

## CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of August, 1998, a copy of e•spire's Petition to Reject or Suspend and Investigate was delivered by hand to the following.

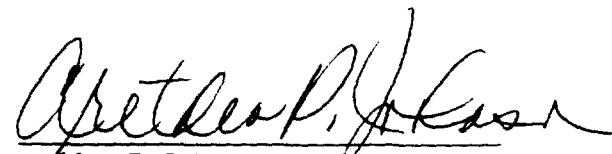
\*Richard M. Sbaratta  
General Attorney  
BellSouth Corporation  
Suite 1700  
1155 Peachtree Street  
Atlanta, GA 30309-3910  
Fax: (404) 249-2118

A. Richard Metzger, Jr.  
Chief, Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW  
Room 500  
Washington, DC 20554

John D. Schlichting  
Chief, Competitive Pricing Division  
Federal Communications Commission  
1919 M Street, NW  
Room 518  
Washington, DC 20554

Judith A. Nitsche  
Chief, Tariff and Price Analysis Branch  
Federal Communications Commission  
1919 M Street, NW  
Room 518  
Washington, DC 20554

ITS, Inc.  
1231 20<sup>th</sup> Street, NW  
Washington, DC 20036

  
Arethea P. Johnson

\* By Facsimile